

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**BELEN A. HOLBROOK, individually,
as Next Friend of A.H., a minor, and
as Personal Representative for
Wrongful Death claims,**

Plaintiff,

v.

Case No. 2:20-cv-00092-SMV-GJF

UNITED STATES of AMERICA,

Defendant.

UNOPPOSED MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM

Plaintiff Belen Holbrook respectfully moves the Court for the entry of an Order appointing Gabrielle M. Valdez, Esq. to serve as Guardian Ad Litem for A.H., the minor child of Belen Holbrook and Decedent Charles Holbrook, in connection with the settlement and disbursement of Charles Holbrook's wrongful death estate and the minor's loss of consortium claim. Plaintiff sought Defendant USA's concurrence with this Motion, and Defendant does not oppose. In support of the Motion, Plaintiff states:

1. The Parties have entered into a tentative agreement regarding the resolution of Plaintiff's claim for damages arising from the wrongful death of Charles Holbrook. For the reasons set forth below, it is appropriate that the Court appoint a Guardian Ad Litem to review and advise the Court regarding the terms and conditions of the agreement, its reasonableness, fairness, and appropriateness for the minor.

2. Gabrielle M. Valdez, an attorney and experienced Guardian Ad Litem, is an appropriate person to serve as the Guardian Ad Litem for A.H., age 14 (born: 2005), in connection with this case.

3. The appointment of the Guardian Ad Litem does not contemplate representation in the wrongful death case. As a beneficiary under the New Mexico Wrongful Death Act, A.H.'s interests are already represented by competent counsel, and the Guardian Ad Litem under this appointment should not be requested to invade or interfere with Plaintiff's counsel's responsibility to adequately and effectively represent the interest of the beneficiaries in the wrongful death case.

4. There are strong public policy reasons to grant immunity to the Guardian Ad Litem in this case, who is acting as an "Arm of the Court" in performing an essential role as the judge's assistant in this Court's administration of justice.

5. All immunities and privileges available to the Guardian Ad Litem, as articulated by the New Mexico Supreme Court in *Collins v. Tabet*, 1991-NMSC-013, 111 N.M. 391, should be extended to the Guardian Ad Litem in this matter.

6. The Court should consider factors from the balancing test set forth by the New Mexico Supreme Court in *Leyba v. Whitley*, 1995-NMSC-066, 120 N.M. 768, in determining the duties of the Guardian Ad Litem, and should find that no duty is owed by the Guardian Ad Litem to the minor, A.H., or any of the other litigants in this case.

Accordingly, for all of the foregoing reasons, Plaintiff requests that the Court enter an Order appointing Gabrielle M. Valdez, Esq., to serve as Guardian Ad Litem on behalf of the minor, A.H., and to serve as Arm of the Court in connection with the Court's consideration of the resolution of this case insofar as it affects the minor.

Dated: June 30, 2020

Respectfully submitted,



/s/Jamison Shekter
Randi McGinn
Jamison Shekter
201 Broadway Blvd. SE
Albuquerque, NM 87102
p: (505) 843-6161
f: (505) 242-8227
Randi@McGinnLaw.com
Jamison@McGinnLaw.com

-and-

Rachael Gilmer
Levin, Papantonio, Thomas, Mitchell,
Rafferty & Proctor, P.A.
316 S. Baylen Street, Suite 600
Pensacola, FL 32502-599
p: (850) 435-7192
rgilmer@levinlaw.com

Attorneys for Plaintiff

REVIEWED AND APPROVED:

/s/ Jennifer A. Maceda - Approved via Electronic Mail on June 30th, 2020

Jennifer A. Maceda
Trial Attorney
United States Department of Justice
Civil Division, Torts Branch
Aviation, Space, and Admiralty Section
P.O. Box 14271
Washington, DC 20044-4271
Tel: (202) 616-4033
Fax: (202) 616-4002
jennifer.a.maceda@usdoj.gov
Attorney for the United States